

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
St. Louis Division

In Re

John D. Kluba,

Debtor,

**BAC Home Loans Servicing, L.P. fka
Countrywide Home Loans Servicing,
L.P.,**

its principals, successors and assigns

Movant,

v.

John D. Kluba , Debtor,

and

John V. LaBarge, Jr., Trustee,

Respondents.

Case No. **09-47929-399**

Chapter **13**

**MOTION FOR RELIEF FROM
THE AUTOMATIC STAY**

MOVANT WAIVES 30 DAY
HEARING

Hearing date: July 20, 2010
Hearing time: 09:30 AM

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MOTION FOR RELIEF FROM THE AUTOMATIC STAY

COMES NOW BAC Home Loans Servicing, L.P. fka Countrywide Home Loans Servicing, L.P., and its principals, successors and Assigns, "Movant" herein, pursuant to Bankruptcy Rules 4001 and 9014, states and alleges as follows:

1. John D. Kluba ("Debtor") filed his Chapter 13 Bankruptcy petition on August 14, 2009, and it is currently pending before this Court.
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C.



Sections 151, 157 and 1334 and E.D.Mo. L.R. 81-9.01(B). This is a core proceeding pursuant to 28 U.S.C. Section 157(b)(2). Venue is proper in this District under 28 U.S.C. Section 1409(a).

3. On August 24, 2005, a negotiable promissory note ("Note") was executed in favor of America`s Wholesale Lender, in the principal amount of \$116,000.00 plus interest to accrue thereon at the rate of 6.000% per annum. A copy of said Note is marked Exhibit 1 and is attached hereto and incorporated herein by reference.

4. The Note is secured by a Deed of Trust ("Deed") on certain real property and improvements located at 8805 Genreal Grant Lane, Saint Louis, MO 63123. A copy of said Deed of Trust is marked Exhibit 2 and is attached hereto and incorporated herein by reference. The Deed was recorded on August 31, 2005, in Book 16755 Page 2036. The subject real estate is legally described as follows:

LOT 3 OF GENERAL GRANT PLACE, A SUBDIVISION IN ST. LOUIS COUNTY, MISSOURI, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 36, PAGE 39 OF THE ST. LOUIS COUNTY RECORDS.

(hereafter, the "Property").

5. Movant is the owner and holder of said Note and Deed of Trust.

6. Debtor has defaulted on the Note in that 3 post-petition payments for the months of March 2010 through and including May 2010 have been missed. The total post-petition arrearage due as of June 3, 2010 is \$5081.76 and itemized below:



| Quantity | Item | Rate | Amount |
|----------|------------------|------------|------------|
| 4 | Payment Amount @ | \$1,070.44 | \$4,281.76 |
| 1 | Attorney Fees @ | \$650.00 | \$650.00 |
| 1 | Attorney Costs @ | \$150.00 | \$150.00 |
| | Grand Total @ | | \$5,081.76 |

A copy of the post-petition payment history is marked Exhibit 3 and is attached hereto and incorporated herein by reference.

7. The balance owed on the Note is approximately \$117,083.56. The fair market value of the property, according to the St. Louis County assessor's office, is approximately \$146,500.00.

8. In Addition to Movant, the following entities may claim an interest in the property:

-None

9. Pursuant to 11 U.S.C. § 362(d)(1) and (2), on request of a party in interest and after notice and hearing, the Court shall grant relief from the automatic stay, for cause, including non-payment or lack of adequate protection of an interest in property of a party in interest and/or if (a) the Debtor does not have equity in such property, and (b) such property is not necessary for an effective reorganization.

10. Movant asserts that Debtor's failure to make post-petition regular payments as required under the Note and Deed of Trust and confirmed Chapter 13 Plan, result(s) in a lack of adequate protection of Movant`s security interest



and, therefore, a continuation of the automatic stay imposed under Section 362 places Movant's collateral in jeopardy. As such, grounds exist for granting relief from the automatic stay, effective immediately upon entry of the order.

11. The Movant further seeks relief in order to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement. The Movant may contact the Debtor via telephone or written correspondence to offer such an agreement. Any such agreement shall be non-recourse unless included in a reaffirmation agreement.

WHEREFORE, BAC Home Loans Servicing, L.P. fka Countrywide Home Loans Servicing, L.P. respectfully prays this Court:

Enter an Order granting relief from the automatic stay and finding that the fourteen (14) day stay period pursuant to Rule 4001(a)(3) shall be inapplicable; authorizing Movant to exercise its rights under the Note and Deed of Trust and applicable non-bankruptcy laws; authorizing Movant to pursue its state court remedies for possession of the subject real estate; authorizing Movant to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement; authorizing Movant to contact the Debtor via telephone or written correspondence to offer such an agreement, which shall be non-recourse unless included in a reaffirmation agreement; and for such other orders as the Court deems appropriate.



Respectfully submitted,

_____/s/ William T. Holmes, II_____
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I certify that a true copy of the above Pleading was served either electronically or via first class mail on June 3, 2010, upon the following parties:

John D. Kluba
Debtor
8805 General Grant
Saint Louis, MO 63123

David Nelson Gunn
Attorney for Debtor
1600 S. Brentwood Ste. 725
Brentwood, MO 63144

John V. LaBarge, Jr.
Trustee
P.O. Box 430908
St. Louis, MO 63143

Office of the US Trustee
U.S. Trustee
111 S. 10th St., Ste. 6353
St. Louis, MO 63102

/s/ Niki Dodson
Niki Dodson

